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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY ALLAN JOAQUIN,

Defendant and Appellant.

A152786

(Mendocino County

Super. Ct. No.

SCUKCRCR1789461001)

Jeffrey Allan Joaquin (appellant) appeals from a judgment sentencing him to 12 years in prison after he pleaded no contest to attempted unpremeditated murder and admitted allegations that he had personally used a firearm and had previously served a prison term. (Pen. Code, §§ 187, subd. (a)/664, 667.5, subd. (b), 12022.5, subd. (a).)¹ He contends the case must be remanded for resentencing because the Legislature subsequently passed Senate Bill No. 620 (2017–2018 Reg. Sess.), which amended section 12022.5 to give the trial court the discretion to strike firearm use enhancements in the interests of justice. (§ 12022.5, subd. (c).) We agree and remand for resentencing.

I. BACKGROUND

On March 21, 2017, appellant fired a shotgun at the victim from a distance of about 60 feet. He was charged by felony complaint with three counts: premeditated attempted murder with an allegation that he personally and intentionally discharged a

¹ Further statutory references are to the Penal Code.

firearm (§§ 664/187, subd. (a), 12022.53, subd. (c)), possessing a firearm having been previously convicted of a felony (§ 29800, subd. (a)(1)), and assault with a firearm (§ 245, subd. (a)(2)). A firearm use allegation and a prison prior were also alleged. (§§ 12022.5, subd. (a), 667.5, subd. (b).)

Defendant entered into a plea agreement that called for him to plead no contest to attempted murder without premeditation and to admit a firearm use allegation under section 12022.5, subdivision (a) and a prison prior under section 667.5, subdivision (b). The parties stipulated to a sentence of 12 years: the seven-year middle term for unpremeditated attempted murder, the four-year middle term for the firearm use allegation and one year for the prison prior. The court accepted the plea on August 10, 2017 and imposed the 12-year sentence at a sentencing hearing held September 7, 2017. At a hearing held on September 15, 2017, the court recalculated appellant's presentence credits to comply with section 2933.1.

At the time of sentencing, firearm enhancements under section 12022.5, subdivision (a) were mandatory and could not be stricken in the interests of justice. (See former § 12022.5, subd. (c).) On October 11, 2017, the Governor signed Senate Bill No. 620. Effective January 1, 2018, the bill amended section 12022.5, subdivision (c), to state, "The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law." (§ 12022.5, subd. (c); Stats. 2017, ch. 682, § 2.)

Appellant filed a notice of appeal on October 26, 2017 in which he indicated the appeal was based on the sentence or on other matters occurring after the plea that did not affect the validity of the plea. He did not request a certificate of probable cause under section 1237.5. Appellate defense counsel requested permission to file a late request for a certificate of probable cause, which this Court denied on June 8, 2018. The People filed a motion to dismiss the appeal for failure to obtain a certificate of probable cause. On September 21, 2018, we denied the motion. (*People v. Hurlic* (2018) 25 Cal.App.5th

50, 59 (*Hurlic*); see also *People v. Baldivia* (2018) 28 Cal.App.5th 1071, 1077–1079 (*Baldivia*).)²

II. DISCUSSION

Appellant argues Senate Bill No. 620 requires a remand for resentencing so the trial court can consider whether to strike the firearm use enhancement imposed under section 12022.5, subdivision (a), pursuant to the discretion newly conferred under section 12022.5, subdivision (c). The People agree that the amendment applies retroactively to this case (*People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1088; *People v. Chavez* (2018) 22 Cal.App.5th 663, 712; *In re Estrada* (1965) 63 Cal.2d 740, 742), but contend a remand is not required because it would serve no purpose other than to squander scarce judicial resources when the firearm use enhancement was a part of the agreed-upon 12-year sentence. We agree with appellant that the plea bargain does not preclude the trial court from exercising its discretion to strike the firearm enhancement and does not render a remand futile.

In *Hurlic*, *supra*, 25 Cal.App.5th at page 57, the court concluded a remand was required in a case where the court had imposed a stipulated sentence that had been

² In their respondent’s brief, the People do not renew their argument that the appeal should be dismissed because a certificate of probable cause is required. In any event, no certificate of probable cause is required. (*Hurlic*, *supra* 25 Cal.App.5th at pp. 54–59.) First, we agree with the analysis of the dissent in *People v. Fox* (2019) 34 Cal.App.5th 1124, 1144, petn. for review pending, petn. filed June 12, 2019, (Sanchez, J. dissenting) (*Fox*) that “a plea agreement is deemed to incorporate changes in the law such as Senate Bill 620 that are intended to apply to the parties. [Appellant’s] appeal, which seeks resentencing to allow the trial court to exercise its discretion consistent with the new legislation, is not an attack on the validity of the plea itself but rather an effort to raise issues *reserved* by the plea agreement, and as to which [appellant] did not waive his right to appeal.” Second, because providing appellant the relief requested would not invalidate the plea, the appeal is not “in substance . . . an attack on the validity of the plea.” (*People v. Buttram* (2003) 30 Cal.4th 773, 782; see also *People v. Stamps* (2019) 34 Cal.App.5th 117, pp. 121–122, review granted June 12, 2019, S255843; *Hurlic*, *supra*, 25 Cal.App.5th at pp. 54–59.) Finally, we question whether the appeal would require a certificate of probable cause even if appellant is not entitled to the relief requested; a conclusion that appellant’s statutory interpretation is incorrect does not transform his appeal into an attack on the validity of the plea. (But see *Fox*, *supra*, 34 Cal.App.5th at p. 1139.)

reached as part of a plea bargain made before Senate Bill No. 620 became effective. *Hurlic* acknowledged the contractual nature of plea bargains, but observed that, “[u]nless a plea agreement contains a term requiring the parties to apply only the law in existence at the time the agreement is made . . . ‘the general rule in California is that the plea agreement will be “ ‘deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy.’ ” ’ ” (*Hurlic*, *supra*, 25 Cal.App.5th at p. 57, citing *Doe v. Harris* (2013) 57 Cal.4th 64, 66 (*Doe*); see *Harris v. Superior Court* (2016) 1 Cal.5th 984, 991 (*Harris*).) Because the defendant’s plea bargain did not contain language to the contrary, it was deemed to incorporate Senate Bill No. 620 and “thus give defendant the benefit of its provisions without calling into question the validity of the plea.” (*Hurlic* at p. 57.) *Hurlic* concluded that the appeal did not require a certificate of probable cause under section 1237.5 even though ordinarily, a challenge to an agreed-upon sentence imposed as part of a negotiated plea is a challenge to the validity of that plea and requires a certificate. (*Id.* at pp. 53, 57-58.) Although the court’s discussion of why it would not be futile to remand the case was not published and is not citable (Cal. Rule of Court, rule 8.1115(a)), implicit in the published portion of the analysis is the principle that a court may resentence a defendant under Senate Bill No. 620 in a case where it retroactively applies and may strike a firearm enhancement even where the defendant has received a stipulated sentence.

Hurlic was followed in *Baldivia*, *supra*, 28 Cal.App.5th at pages 1074, 1079-1080, in which the case was remanded for a transfer hearing under Proposition 57 and, if necessary, for a resentencing hearing under Senate Bill No. 620, notwithstanding defendant’s no contest plea and stipulated sentence. The primary issue in *Baldivia* was whether the appeal involved a challenge to the validity of the plea that required a certificate of probable cause, it being undisputed by the parties that the underlying contention was meritorious and the retroactive application of Senate Bill No. 620 required a remand so the court could consider whether to strike the firearm enhancement. (*Id.* at p. 1079.) Implicit in the court’s conclusion that no certificate of probable cause

was required was the assumption that under the principle that a plea agreement incorporates subsequent changes in the law, the plea agreement in that case contemplated that discretion retroactively given the court could be exercised in a case where the defendant had pleaded guilty or no contest and received a stipulated sentence. (*Ibid.*)

In *People v. Stamps* (2019) 34 Cal.App.5th 117, review granted June 12, 2019, S255843 (*Stamps*), Division Four of this District followed *Hurlic* in the context of Senate Bill No. 1393, which gives courts the discretion to strike the five-year serious felony enhancement under section 667, subdivision (a) and which, like Senate Bill No. 620, has been held to apply retroactively to cases not yet final when it went into effect. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973.) *Stamps* rejected the People’s argument that “retroactive application of the new law in this case would deprive the prosecution of the benefit of its plea bargain.” (*Stamps*, at p. 122, review granted; see *Doe, supra*, 57 Cal.4th at pp. 73-74 [“It follows, . . . as a general rule, that requiring the parties’ compliance with changes in the law made retroactive to them does not violate the terms of the plea agreement, nor does the failure of a plea agreement to reference the possibility that the law might change translate into an implied promise the defendant will be unaffected by a change in the statutory consequences attending his conviction. To that extent, then, the terms of the plea agreement can be affected by changes in the law.”].) *Stamps* declined to follow the decision in *People v. Kelly* (2019) 32 Cal.App.5th 1013, 1018, review granted June 12, 2019, S255145, which concluded a resentencing to comply with Senate Bill No. 1393 would be a “ ‘bounty in excess of that to which [the defendant] is entitled.’ ” (*Stamps*, at pp. 123–124, review granted.) *Stamps* observed that *Kelly* “failed to consider the reasoning on which *Hurlic* is based, and it failed to cite or consider” the cases underlying that decision. (*Stamps*, at p. 124, review granted.) We agree with the reasoning of *Hurlic* and *Stamps*.

Recently, another Division of this court issued a split decision in *Fox, supra*, 34 Cal.App.5th 1124 (*Fox*), and held that a defendant who had received a firearm enhancement as part of a plea bargain that was entered after Senate Bill No. 620 was passed and was sentenced on the day it was signed into law was *not* entitled to be

resentenced because the court was bound by the terms of the plea bargain it had accepted. The majority in *Fox* concluded that while a defendant who had received a stipulated sentence in exchange for his or her plea could obtain a certificate of probable cause and seek to set aside the plea based on the retroactive effect of the amendments to the statute, the defendant was not entitled to have a firearm enhancement stricken without setting aside the plea. (*Id.* at p. 1139.) It found inapplicable the general rule that plea agreements incorporate substantive changes in the law; first, the defendant had entered his plea when Senate Bill No. 620 had already passed the Legislature; but more importantly, that rule pertained only to changes the Legislature or electorate intended to apply to existing plea agreements. (*Id.* at pp. 1135–1136.) Because the majority concluded the Legislature did not intend for Senate Bill No. 620 to apply to all defendants, even those who had entered into a plea bargain, its retroactive application did not supersede the general rule that a court may not sentence a defendant outside the confines of a plea bargain it has accepted. (*Id.* at p. 1137.)³

With all due respect to the thoughtful analysis of the majority in *Fox*, we agree with the dissent, which followed *Hurlic*, *Baldivia* and *Stamps* and concluded that (1) no certificate of probable cause was needed to raise the claim that the retroactive application of Senate Bill No. 620 required the court to hold a new sentencing hearing for a defendant who received a stipulated sentence as a condition of his plea; and (2) the rule that plea agreements incorporate changes to the law such as Senate Bill No. 620, as well as the rule that the law should be given retroactive effect, require a remand for resentencing without giving the People the opportunity to withdraw the plea. (*Fox*, *supra*, 34 Cal.App.5th at pp. 1142–1154 (dis. opn. of Sanchez, J.).) “The majority questions whether the Legislature would have intended for defendant in effect to ‘have his cake and eat it too.’ But it is not unusual for legislative enactments to alter the consequences of a plea agreement to the detriment of one party or the other. Parties to a plea deal understand that sometimes they must bend to the will of the Legislature. Senate

³ Even more recently, in *People v. Galindo* (2019) 35 Cal.App.5th 658, a First District, Division One panel followed *Fox* in the Senate Bill No. 1393 context.

Bill No. 620 requires only that the trial court exercise its discretion to decide *whether* to strike a firearm enhancement, in full view of the circumstances that gave rise to the plea agreement and in accordance with the equities of the situation and the interests of justice.” (*Fox*, at p. 1140 (dis. opn. of Sanchez, J.).)

Defendants are entitled to decisions made in the informed discretion of the court. (*Billingsley*, *supra*, 22 Cal.App.5th at p. 1081.) Remand is required unless “ ‘ “the record shows that the trial court would not have exercised its discretion even if it believed it could do so.” ’ ” (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425.) Here, the plea bargain did not “contain a term incorporating only the law in existence at the time of execution,” and did not preclude the trial court from striking the enhancement. The court’s acceptance of the negotiated sentence “does not clearly establish that the court would not have exercised its discretion to strike the enhancement if it had that discretion.” (*Stamps*, *supra*, 34 Cal.App.5th at p. 124, review granted.) We will remand the case for resentencing.

“In exercising its discretion, the trial court is not precluded from considering whether doing so would be incompatible with the agreement on which defendant’s plea was based. If the trial court strikes the enhancement, it shall resentence defendant. In selecting an appropriate sentence, the court retains its full sentencing discretion except that it may not impose a term in excess of the negotiated [term] without providing defendant the opportunity to withdraw his plea. [Citation.] . . . If the trial court does not strike the enhancement, it shall reinstate the sentence.” (*Stamps*, *supra*, 34 Cal.App.5th at p. 124, review granted.)

By a separate order filed this same date, we have denied appellant’s companion petition for writ of habeas corpus. (*In re Jeffrey Allan Joaquin*, A156067 [nonpub. order].)

III. DISPOSITION

The judgment is reversed and the matter is remanded to permit the court to determine whether to strike the firearm use enhancement under section 12022.2,

subdivision (a), and to resentence defendant accordingly. In all other respects, the judgment is affirmed.

SIMONS, Acting P.J.

I concur.

BURNS, J.

(A152786)

NEEDHAM, J., Dissenting

I respectfully dissent. The appeal should be dismissed because appellant did not obtain a certificate of probable cause.¹

The law is straightforward. An appellant who wants to challenge the validity of his or her plea must first obtain a certificate of probable cause from the trial court. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76; Pen. Code, § 1237.5.) The plea's validity is challenged, and a certificate of probable cause is required, if the appellant attacks the sentence that the parties agreed the court would impose as part of the plea bargain. (E.g., *Panizzon, supra*, 13 Cal.4th at p. 78 [appellant's challenge to the constitutionality of the sentence he negotiated as part of his plea bargain constitutes an attack on the validity of the plea, necessitating a certificate of probable cause]; *People v. Cuevas* (2008) 44 Cal.4th 374, 381–382 [appellant's challenge to the sentence that he agreed would be the maximum possible sentence is in substance an attack on the validity of his plea].)

Here, appellant's plea was based on an agreement by which the court would impose a specific sentence of 12 years, including four years for his admission of a firearm use allegation under Penal Code section 12022.5, subdivision (a). Appellant now asks us to remand the case because he wants the trial court to *change* the negotiated terms of the plea by striking the firearm use enhancement and reducing his sentence pursuant to Senate Bill 620 (Pen. Code, § 12022.5, subd. (c)). Striking the enhancement and reducing the sentence pierces the heart of the plea agreement and, in contract terms, destroys part of the consideration for the plea bargain. Appellant here is plainly attacking the validity of the plea, and a certificate of probable cause is required.

¹ We previously denied the People's motion to dismiss the appeal for failure to obtain a certificate of probable cause. Although the People did not renew their argument in their respondent's brief, the fact remains that this court cannot consider any issue requiring a certificate of probable cause, if no certificate was obtained. (Cal. Rules of Court, rule 8.304(b).)

The majority nonetheless concludes in a footnote that no certificate is necessary. (Maj. opn. ante, at p. 3, fn. 2.) It begins by relying on the dissent in *People v. Fox* (2019) 34 Cal.App.5th 1124 (*Fox*), to the effect that appellant is merely trying to “ ‘raise issues reserved by the plea agreement.’ ” (Maj. opn. ante, at p. 3, fn. 2., quoting *Fox*, at p. 1144 (dis. opn. of Sanchez, J.)) That, however, is incorrect. Appellant is seeking to invoke the trial court’s discretion to shorten his sentence; his conditional plea agreement did *not* reserve any issue in that regard. To the contrary, his conditional plea—and by definition every conditional plea—*precludes* the exercise of such discretion. (See *People v. Segura* (2008) 44 Cal.4th 921, 930–931 (*Segura*).) And since the parties to appellant’s conditional plea agreed to preclude the court from exercising its discretion to deviate from his proposed sentence, it cannot be said that the plea agreement “reserved” any possibility of the court later exercising its discretion to shorten his sentence, even if a new law offers an additional discretionary basis for doing so.

The majority’s footnote next asserts that appellant does not need a certificate because his request for relief does not actually attack the plea’s validity. The majority cites *People v. Buttram* (2003) 30 Cal.4th 773, 782 (*Buttram*), but *Buttram* affirms the principle that a certificate *is* required where, as here, the appellant attacks a specific sentence to which the parties agreed. (*Id.* at pp. 781–782, 789.) While *Buttram* further concluded that a certificate of probable cause was not needed to challenge the court’s exercise of discretion allowed under the plea agreement to select a sentence *within* an agreed maximum, that is not at issue here. (*Id.* at pp. 785–789.)

The majority also cites *People v. Hurlic* (2018) 25 Cal.App.5th 50 (*Hurlic*) and a case following *Hurlic* in another context, *People v. Stamps* (2019) 34 Cal.App.5th 117. (Maj. opn. ante, at p. 3, fn. 2.) *Hurlic* acknowledged that a certificate of probable cause is required where, as here, the appellant challenges “a specific, agreed-upon sentence,” but ruled that this mandate is “trump[ed]” by authority making criminal statutes retroactive. (*Hurlic*, at pp. 55–57.)

Hurlic's proposition that retroactivity "trumps" the certificate of probable cause requirement is puzzling to me. It would mean that, even though a certificate of probable cause is mandated for attacks on plea bargains reached after the effective date of SB 620, no certificate would be needed for attacks on plea bargains reached before the law was even in existence. This is certainly counter-intuitive, and I find *Hurlic*'s reasons for its conclusion unconvincing.

Hurlic's primary justification for its retroactivity analysis borrows from the idea that new laws are sometimes incorporated into old plea agreements. (*Hurlic, supra*, 25 Cal.App.5th at p. 57.) *Hurlic* asserts that, unless a plea agreement explicitly requires the parties to apply only the law in existence when the agreement is made, " 'the general rule in California is that the plea agreement will be " 'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy.' " ' " (*Hurlic, supra*, 25 Cal.App.5th at p. 57, quoting *Doe v. Harris* (2013) 57 Cal.4th 64, 66 (*Doe*)). Relying on *Doe* and *Harris v. Superior Court* (2016) 1 Cal.5th 984 (*Harris*), *Hurlic* concluded that the subject plea agreement was " 'deemed to incorporate' the subsequent enactment of [SB 620], and thus give defendant the benefit of its provisions without calling into question the validity of the plea." (*Hurlic, supra*, 25 Cal.App.5th at p. 57.)

However, the cases on which *Hurlic* relied—*Doe* and *Harris*—are distinguishable. Besides the fact that neither of them addressed the certificate of probable cause requirement, the plea agreements in those cases were deemed to incorporate substantive changes in the law made explicitly applicable to the defendants' agreements. (*Doe, supra*, 57 Cal.4th at pp. 66–67; *Harris, supra*, 1 Cal.5th at p. 987.) *Doe* determined that a defendant's plea agreement was subject to a change in the registration requirements for sex offenders, where the Legislature made the new public notification provisions explicitly applicable to every person subject to the registration requirement. (*Doe, supra*, 57 Cal.4th at pp. 66–67.) *Harris* determined that Penal Code section

1170.18, subdivision (a), which reduced grand theft from the person to a misdemeanor and required resentencing, applied to a defendant convicted by a plea because the statute specifically stated that it applied to defendants convicted “by trial or plea.” (*Harris*, *supra*, 1 Cal.5th at p. 991.)

In stark contrast, SB 620 merely amended Penal Code section 12022.5, subdivision (c) to read: “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section.” (Pen. Code, § 12022.5 (added by Stats. 2017, ch.682 § 1).) SB 620 does not require all Penal Code section 12022.5 enhancements to be stricken; nor does it make its provisions applicable to those who were convicted by plea bargain, let alone those who stipulated to a particular sentence in their plea deal long ago.

This distinction makes a difference, as explained in *Fox*, *supra*. As the majority in *Fox* concluded, the “general” rule that plea agreements incorporate changes in the law pertains only to changes that the Legislature or electorate intended to apply to the parties to plea agreements, and there is no indication that SB 620 was intended to apply to plea bargains in which the defendant and the prosecution agreed that a specific sentence would be entered in exchange for the dismissal of other counts, rights, or remedies. (*Fox*, *supra*, 34 Cal.App.5th at pp. 1135–1139.) I agree that the incorporation theory of *Doe* and *Harris* does not apply here.² (See *People v. Galindo* (2019) 35 Cal.App.5th 658,

² It is also unclear *how* SB 620 would be incorporated into past plea agreements. Ordinarily, if the defense and prosecution have negotiated a conditional plea specifying the exact sentence, a trial court believing the stipulated disposition to be unfair could reject the agreement in toto, but it could not simply strike a term or shave years off the sentence without the consent of both parties. (*Segura*, *supra*, 44 Cal.4th at p. 931.) The fact that SB 620 by its terms does allow the court to strike or dismiss an enhancement suggests to me that the Legislature did not intend SB 620 to apply to conditional pleas – especially without a legislative directive that it does. But let’s say the provisions of SB 620 *were* incorporated into past conditional plea agreements. Would a court that is inclined to strike an enhancement have to reject the past plea agreement in toto, leaving the parties without a plea deal at a time when witnesses and evidence may be difficult to

670–672 (*Galindo*) [rejecting *Hurlic*, following *Fox*, and dismissing an appeal seeking relief under Senate Bill 1393 due to appellant’s failure to obtain a certificate of probable cause].)

As another reason for trumping the certificate of probable cause requirement, *Hurlic* asserted that the intent behind the requirement is to encourage plea agreements and weed out frivolous and vexatious appeals, and a defendant’s incentive to plead is reduced if the defendant must seek a certificate of probable cause to take advantage of a new law. (*Hurlic, supra*, 25 Cal.App.5th at pp. 57–58.) But it is difficult to believe that a defendant, content with serving a specified number of years in exchange for whatever leniency the prosecutor is offering, would shun the deal and proceed to trial merely because, if in the future some change in the law would shave even more years off his sentence, he would have to file a piece of paper stating why the new law applies (which he would have to establish eventually anyway). As for the purpose of weeding out frivolous appeals, *Hurlic* opined that a certificate of probable cause is not needed because “the defendant’s entitlement to [SB 620]’s retroactive application is undisputed” (*id.*, at p. 58); but if, as *Fox* concludes, it was *not* the Legislature’s intent for SB 620 to apply to defendants who had agreed on a specific sentence as a term of their plea, the intended gatekeeping function of the certificate of probable cause requirement will only be fulfilled if, indeed, the requirement is imposed. (See *Fox, supra*, 34 Cal.App.5th at p. 1137.)

find, and potentially causing the prosecution to dismiss the charges altogether? Or would SB 620 empower the court to redo the parties’ deal and lop off (in this case) one-third of the defendant’s stipulated sentence without allowing the prosecutor to withdraw from the agreement or renegotiate the disposition? The majority assumes the latter, and perhaps the fact that SB 620 permits a court to strike an enhancement only “in the interest of justice under Section 1385” serves as a “ ‘safety valve’ ” protecting the public and minimizing unfairness. (See *Harris, supra*, 1 Cal.5th at p. 992.) But that still does not mean the certificate of probable cause requirement goes away.

As its third and final reason for trumping the certificate of probable cause requirement, *Hurlic* asserted that the more specific and newer SB 620 should prevail over the more general and older Penal Code section 1237.5. But those rules of construction apply only where there is no other way of harmonizing the statutes. Here, if there is any conflict between the certificate of probable cause requirement and the retroactivity of SB 620, the conflict is readily harmonized: SB 620 applies retroactively, except to convictions by plea bargains in which a condition of the plea was the specific sentence the defendant received.

I therefore find nothing in *Hurlic*, or anything else in the majority's footnote in this case, justifying the conclusion that appellant can seek a change in his stipulated sentence without obtaining a certificate of probable cause.³

Finally, I take issue with other language the majority quotes from the dissent in *Fox*, that “it is not unusual for legislative enactments to alter the consequences of a plea agreement to the detriment of one party or the other,” “[p]arties to a plea deal understand that sometimes they must bend to the will of the Legislature,” and SB 620 “requires only that the trial court exercise its discretion to decide *whether* to strike a firearm enhancement, in full view of the circumstances that gave rise to the plea agreement and in accordance with the equities of the situation and the interests of justice.” (Maj. opn. ante, at p. 7, quoting *Fox*, *supra*, 34 Cal.App.5th at p. 1140 (dis. opn. of Sanchez, J.).) To the contrary, giving a court discretion to change the terms of a plea agreement and sentence the defendant to less than the *stipulated* term is a very big deal, inconsistent with foundational principles of plea negotiation and, for that reason, not something the parties

³ The majority's footnote also questions whether appellant's appeal would require a certificate of probable cause even if he is not entitled to a remand for resentencing, because “a conclusion that appellant's statutory interpretation is incorrect does not transform his appeal into an attack on the validity of the plea.” (Maj. opn. ante, at p. 3, fn. 2.) My point, however, is not that appellant needs a certificate of probable cause because he is wrong in his interpretation of the statute, but because his request for relief attacks the validity of his plea.

would expect. Not only does it allow the defendant to serve less time than the prosecutor believed would protect the public, it undermines the very nature and purpose of conditional pleas, which both parties enter into so the court will *not* make discretionary changes to the sentence. It is one thing to allow the court to exercise its discretion when the parties had agreed that the sentence would be left to the court's discretion; it is quite another to give the court discretion to change the sentence when the parties had agreed that only one sentence was acceptable.

In my view, there is still value to the principle that, as with other types of contracts, "a deal is a deal." Before this principle becomes but a dim light in our rear-view mirror, we should consider carefully the extent to which the Legislature has required a plea deal to be undone. And while the Legislature could conceivably ordain a reduction in a sentence contrary to the parties' agreement, or delegate such authority or discretion to the courts, it is good sense and sound policy to require the Legislature to communicate that intent explicitly.

NEEDHAM, J.

(A152786)